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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,) CASE NO. CR 08-0222 WHA
Plaintiff,)
v.) UNITED STATES' OBJECTION TO MOTION TO
LUKE D. BRUGNARA,) VACATE HEARING
Defendant.) DATE: June 16, 2014
) TIME: 8:00 a.m.
) Honorable William Alsup
)

On June 3, 2014, the defendant requested and was granted a prompt hearing regarding supervised release violations alleged by the United States Probation Office. At approximately 2:25 p.m. on Friday, June 13—the business day prior to scheduled hearing requested by defendant—defendant moved to vacate the hearing. (Dkt. 267.) In support of his request, defendant argues it would be “unnecessarily duplicative” to proceed with the evidentiary hearing he requested, and thus “an unnecessary waste of judicial and prosecutorial resources at this time” and “in the best interest of all parties to delay” the prompt hearing he requested. (*Id.* at 2-3.) The United States disagrees and objects to defendant’s last-minute request.

As for prosecutorial resources, moving to delay a hearing on the eve of its occurrence does not preserve such resources. The defendant requested a prompt hearing, and the United States has and is

1 prepared for that hearing. Preparing for a hearing on the expedited schedule defendant requested
 2 necessarily resulted in, among other things, shifting prosecutorial resources, rescheduling other
 3 obligations, and now additional time responding to the last-minute motion. In sum, minimal, if any,
 4 prosecutorial resources will be saved by delaying the revocation hearing; indeed, the opposite will be
 5 true, because the United States will have to prepare for the hearing again at some point.

6 A related but more important factor is the adverse impact rescheduling the hearing would have
 7 on potential witnesses in this matter. The primary witness in this matter, R.L., is on her way to the Bay
 8 Area *from New York* as undersigned government counsel types this response.¹ Granting defendant's
 9 motion would result in significant inconvenience to R.L. and a waste of the taxpayers' money spent to
 10 fly her here and to provide lodging for her so she may testify at the hearing defendant requested.
 11 Similarly, another witness the United States may call had to change personal family plans—on Father's
 12 Day—to return to the Bay Area in time for the hearing defendant requested. Undersigned government
 13 counsel has been informed that change in itinerary came at considerable financial expense as well.

14 The Court, of course, may address defendant's claim that delaying this hearing would conserve
 15 judicial resources. The United States suspects, however, that argument is as unavailing as it is when
 16 applied to prosecutorial resources, expenses, and witness inconvenience.

17 Finally, defendant provides string citations to *dicta* in two cases to support his claim of resource
 18 conservation. But those cases are inapposite. In *United States v. Morales-Isbarras*, 745 F.3d 398 (9th
 19 Cir. 2014), the defendant challenged the district court's jurisdiction to revoke a term of supervised
 20 release after that term had expired, arguing that the delay in adjudicating the violation allegations was
 21 not "reasonably necessary" as used in Title 18, United States Code, Section 3583(i). *Id.* at 399-400.
 22 The Ninth Circuit recognized several instances that could support adjudicating a supervised release
 23 violation even after the term of supervised release had expired. One such instance was if an ongoing
 24 criminal proceeding is directly related to the alleged supervised release violation. While such an
 25 instance may support a delayed adjudication, defendant cites no reason adjudication should be, let alone

26
 27 ¹ Undersigned government counsel was out of the office on a family matter yesterday after 2:15
 28 p.m. so could not respond to defendant's motion yesterday, nor would counsel have expected the Court
 to rule on it in time to alter R.L.'s travel plans if necessary.

1 must be delayed. Similarly, in *United States v. Daniel*, 2009 WL 2044614 (S.D.Cal. July 13, 2009), the
2 issue was whether delaying a federal supervised release adjudication until after resolution of underlying
3 state charges was improper. In reasoning that principles of comity and judicial economy supported
4 allowing the state charges to proceed first, the District Court noted that the state charges included
5 “attempted murder and assault with a deadly weapon, with a potential life sentence.” *Id.* at *1. The
6 District Court also noted that defendant in that case did not demonstrate any prejudice from the delayed
7 revocation hearing. The same is true here: the only prejudice defendant claims is to the Court and the
8 prosecution.

9 The United States respectfully requests that the evidentiary hearing on defendant's supervised
10 release violation proceed as scheduled.

11 | //

12 | DATED: June 14, 2014

Respectfully submitted,

MELINDA HAAG
United States Attorney